90-1875

Supreme Court, U.S.
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NO.

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1991

EUGENE C. BARD, et al., Petitioner
vs.
DONALD L. CROCKETT, et. al., Respondent[2]

PETITION FOR WRIT OF CERTIORARI

U.S. District Court Case Number 89-5025 CV-SW-8
Kansas City, Missouri, Eighth Circuit,
U.S. Court of Appeals, Case Number 90-2163 WM
St. Louis, Missouri, Eighth Circuit.

Eugene C. Bard by Eugene C. Bard
Eugene C. Bard, pro se

James F. Bard by James F. Bard
James F. Bard, pro se

Max L. Bard d/b/a by Max L. Bard
Max L. Bard, pro se

Bard & Bard Co.

Correspond with Max L. Bard
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[2] See Appendix at page APP. 18, 19 for complete list of respondents.

5

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals, Eighth Circuit, by its April 5, 1991 affirmations of the District Court's dismissal of Plaintiffs' pro se Second Amended Complaint, for failure to allege sufficient facts to state a cause of action, is in conflict with the decision of another United States Court of Appeals on the same manner. U.S. vs. Masters, 924 F. 2d 1362 (7th Circuit 1991); U.S. vs. Sedima, 473 U.S. 499, 87 L. Ed 2d 346, 105 S. CT. 3275.; Roeder vs. Alpha Industries, Inc. 814 F 2d 22 (CA 1 1987); Barticheck vs. Fidelity Union Bank/First National State 832 F 2d (CA 9 1987); 52 ALR Red 818.

2. Whether the United States Court of Appeals, Eighth Circuit, in affirming the District Court's dismissal of plaintiffs' pro se second amended complaint for failure to allege sufficient facts to state a cause of action, pursuant to 18 U.S.C. Section 1964 (c), decided

a Federal question in a way that conflicts with applicable decisions of this court. H.J. Inc. vs. Northwestern Bell, 106 L. Ed 2nd 195 (1989); U.S. vs. R.J. Reynolds Tobacco Co. 416 F. Supp. 316 (1976).

3. Whether the United States Court of Appeals Eighth Circuit's affirming of the District Court's dismissal of Plaintiffs' 95 page Second Amended Complaint for failure to state a cause of action pursuant to 18 U.S.C. Section 1964 (c) where it is unclear whether or not, no relief could be granted plaintiffs under any set of facts that could be proved consistent with the allegations. H.J. Inc. vs. Northwestern Bell. 106 L. Ed 2nd 195 (1989)

4. Whether the United States Court of Appeals, Eighth Circuits' dismissal of plaintiffs complaint pursuant to 18 U.S.C. Section 1964 (c) constituted a violation of the separation of powers clause of the constitution of the United States, as to call for an exercise

of this courts power of supervision. U.S. vs. R.J. Reynolds Tobacco Co. 416 F. Supp. 316 (1976); H.J. Inc. vs. Northwestern Bell 106 L. Ed 2nd 195 (1989); Article III of the Constitution of the United States of America3; U.S. Parole Commission vs. Geraghty, Pa. 1980, S. Ct 1202, 63L Ed 2d 479, 445 U.S. 388.; 76 Columbian L. Review 371 (1976); Morrison vs. Olson, 487 Us 654, 101 L Ed 2d 569; Bowsher vs. Snynar 478 US 725, 92 L Ed 2d.

[3] See at Appendix pages APP. 15,16,17, Article I, Section 1, & Article III, of the United States Constitution verbatim copy.

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Petitioners Pray that a Writ of Certiorari issue to review the Opinions of the United States Court of Appeals, Eighth Circuit, entered on May 10, 1991; (Yellow face) Petition for a Rehearing with Suggestion for a Rehearing EnBanc Filed by petitioners on April 18, 1991.

Opinion

The Order of the United States Court of Appeals on May 10, 1991: "Appellants Suggestions for rehearing en banc has been considered by the court and is denied by the reason of the lack of a majority of the active judges"- is not published and is set forth in Appendix, page APP. 1, 2 [1]

[1] Appendix shall be cited as APP.

And the decision of the United States Court of Appeals Eighth Circuit: concerning the (blue faced) petitioners' August 15, 1990 Brief in Chief requesting a hearing by the Proposition #1 "The District Court for the Western District of Missouri erred in dismissing plaintiffs Second Amended complaint in finding that it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations contained in the Plaintiff's Second Amended Petition".

Opinion

Submitted on March 19, 1991, Filed: April 5, 1991. Before John R. Gibson, Bowman, and Loken, Circuit Judges. PER CURIAM, "Eugene C. Bard, James F. Bard, and Max L. Bard doing business as Bard & Bard Company, Appeal from the District Court's dismissal without predjudice of their civil RICO action, filed under 18 USC Section 1964 (c) for failure to state a claim,

the District Court concluded" - is not published and is set forth in Appendix at page APP. 3, 4.

And the decision of the United States District Court Eighth Circuit: concerning the petitioners 95 page Second Amended Petition filed on September 17, 1989, said Second Amended Petition's filing followed an August 23, 1989 order, granting motions of several defendants for a more definite statement and stay of discovery. The September 17, 1989 Second Amended Petition was dismissed on June 14, 1990 under rule 12(b) (6) for failure to state a claim upon which relief can be granted.

Opinion

On June 14, 1990 the United States District Court, Eighth Circuit Ordered that defendants motions to dismiss are granted. It is further Ordered that Plaintiff's complaint is dismissed without predjudice by Honorable Joseph E. Stevens, Jr. United States District Judge (Eighth Circuit) June 14, 1990, the entire order

is not published and is set forth in the Appendix at page APP. 5 thru 12.

And Petitioners' filing of a Motion to the United States Court of Appeals Eighth Circuit on May 20, 1991-Motion for Stay of Mandate Pending Certiorari-

Opinion

The Order returned by the Clerk of the United States Court of Appeals Eighth Circuit denied on May 29, 1991 - is not published and is set forth in Appendix at page APP.13, 14.

JURISDICTION

This Court's jurisdiction is invoked under Article III of the Constitution of the United States of America[3] by virtue of the United States Court of Appeals, Eighth Circuits' decision on April 5, 1991, affirming the Districts Courts dismissal of plaintiffs' pro se complaint, for failure to state a cause of action, pursuant to 18 USC Section 1964 (c).

This Court's jurisdiction is invoked under 28 USC Section 1254 (1) and 28 USC Section 2102 (c). The United States Constitution Article I, Section 1; Article III.[3]

[3] See at Appendix pages APP. 15, 16, 17, Article I, Section 1, & Article III, of the U.S. Constitution verbatim copy.

CONSTITUTIONAL PROVISION STATUTES AND RULES INVOLVED

A. This case was brought by virtue of Federal Statute, title 18, U.S.C., Section 1964 (c), which provides:

> Any person injured in his business or property by reason of a violation of Section 1962 of this chapter may sue therefore in any appropriate United States District Court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

B. Doctrine of Separation of Powers, between the Legislative and Judicial branches of the United States Government. U.S. Constitution, Article I, Section 1; Article III.[3]

[3] See at Appendix pages 15,16,17, Article I, Section 1, & Article III, of the U.S. Constitution Verbatim copy.

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals, Eighth Circuit, by its April 5, 1991 affirmations of the District Court's dismissal of Plaintiffs' pro se Second Amended Complaint, for failure to allege sufficient facts to state a cause of action, is in conflict with the decision of another United States Court of Appeals on the same manner. U.S. vs. Masters, 924 F. 2d 1362 (7th Circuit 1991); U.S. vs. Sedima, 473 U.S. 499, 87 L. Ed 2d 346, 105 S. CT. 3275.; Roeder vs. Alpha Industries, Inc. 814 F 2d 22 (CA 1 1987); Bartlcheck vs. Fidelity Union Bank/First National State 832 F 2d (CA 9 1987); 52 ALR Red 818.

2. Whether the United States Court of Appeals, Eighth Circuit, in affirming the District Court's dismissal of plaintiffs' pro se second amended complaint for failure to allege sufficient facts to state a cause of action, pursuant to 18 U.S.C. Section 1964 (c), decided

a Federal question in a way that conflicts with applicable decisions of this court. H.J. Inc. vs. Northwestern Bell, 106 L. Ed 2nd 195 (1989); U.S. vs. R.J. Reynolds Tobacco Co. 416 F. Supp. 316 (1976).

3. Whether the United States Court of Appeals Eighth Circuit's affirming of the District Court's dismissal of Plaintiffs' 95 page Second Amended Complaint for failure to state a cause of action pursuant to 18 U.S.C. Section 1964 (c) where it is unclear whether or not, no relief could be granted plaintiffs under any set of facts that could be proved consistent with the allegations. H.J. Inc. vs. Northwestern Bell. 106 L. Ed 2nd 195 (1989)

4. Whether the United States Court of Appeals, Eighth Circuits' dismissal of plaintiffs complaint pursuant to 18 U.S.C. Section 1964 (c) constituted a violation of the separation of powers clause of the constitution of the United States, as to call for an exercise

of this courts power of supervision. U.S. vs. R.J. Reynolds Tobacco Co. 416 F. Supp. 316 (1976); H.J. Inc. vs. Northwestern Bell 106 L. Ed 2nd 195 (1989); Article III of the Constitution of the United States of America[3]; U.S. Parole Commission vs. Geraghty, Pa. 1980, S. Ct 1202, 63L Ed 2d 479, 445 U.S. 388.; 76 Columbian L. Review 371 (1976); Morrison vs. Olson, 487 Us 654, 101 L Ed 2d 569; Bowsher vs. Snynar 478 US 725, 92 L Ed 2d.

[3] See at Appendix pages APP. 15,16,17, Article I, Section 1, & Article III, of the United States Constitution verbatim copy.

STATEMENT OF CASE

On March 17, 1989, plaintiffs Bards filed their pro se complaint in the U.S. District Court, Eighth Circuit, against 35 defendants pursuant to 18 U.S.C. Section 1964 (c); and on September 17, 1989, plaintiffs filed their Second Amended complaint, and with the courts permission, added one (1) additional defendant.

Plaintiffs' Second Amended Complaint alleged varied and many acts and occurrences of racketeering, mail fraud, and other injuries to plaintiffs' business and property, prohibited by RICO, 18, U.S.C. sections 1962, 1964 (c).

On June 14, 1990, the District Court dismissed plaintiffs' complaint, for failure to state a claim, under Rule 12 (b) (6). This District Court made a finding that plaintiffs had not alleged the "enterprise" element of RICO sufficiently in that "no ascertainable structure distinct from that inherent in a pattern of racketeering". The said District

Court's dismissal order cited the Mafia family as an example of this "ascertainable structure distinct from that of the predicate acts" and relied on the Eighth Circuits decisions of U.S. vs. Flynn, 852 F. 2d 1045 (8th Circuit); and U.S. vs. Bledsoe, 647 F. 2d (8th Circuit), that amounted to an arbitrary and unreasonable exercise of judicial discretion, in conflict with other circuits and the United States Supreme Court's decision in H.J. Inc. vs. Northwestern Bell 106 L. ED 2nd 195 (1989); U.S. vs. Masters, 924 F. 2d (7th Cir. 1991).

Plaintiffs complaint alleged by name the original meeting of some thirty odd, representing and represented, defendants, made up of business associates, friends, relation, formal agents of oil companies and subsidiaries, banks, pseudo unions, a person falsely claiming to be in close working relationship with the Federal Trades Commission, all involving the enterprise and its structural perimeters, the

source of its command to action, as well as the conspiratorial objectives and structural economic relationship of said enterprise organization. Plaintiffs' said complaint then went on to allege varied and many criminal acts, threats and occurrences, by the named defendants, all in time, that showed predicate acts, as well as various patterns thereof, that injured plaintiffs' property and business.

Plaintiffs' complaint, in addition, alleged varied and many economic acts, as well as criminal acts, that injured not only the plaintiffs' business and property but also them personally all within the continuity of the defendants enterprise from 1970 through to 1989 when it was projected the defendants enterprising influence will continue.

The District Court's rigid advance judicial interpretive fixing of the available methods by which plaintiffs may have been able to prove that defendants unlawful and criminal act's were

with in the RICO statutes' core, after discovery, amounted to a breach of judicial discretion by the district court. Especially, due to the conflict with other circuits' interpretation of the Federal statute and decision of this Court. U.S. vs. Masters, 924 F 2d, 1362, (7th Circuit 1991); Pennsylvania R. Co. vs. O'Rourke, 73 S. CT. 302, 344 U.S. 334, 97 L. Ed 367; Roeder v. Alpha Industries Inc., 814 F 2d 22 (CA A 1987); Barticheck vs. Fidelity Union Bank/First National State, 832 F 2d 36 (CA 3 1987); Sun Savings and Loan Assn. vs. Dierdorff, 825 F 2d 187 (CA 9 1987); H.J. Inc. vs. Northwestern Bell, 106 L. ED. 2nd 195 (1989).

Petitions appealed to the United States Court of Appeals, Eighth Circuit, an August 15, 1990; and, on April 5, 1991, the United States Court of Appeals, Eighth Circuit, affirmed the District Courts dismissal of plaintiffs' petition, thereby sanctioning the departure by

the lower District Court, from this Court's decision in H.J. Inc. v. Northwestern Bell, supra, so as to call for an exercise of this Court's power of supervision, H.J. Inc. vs. Northwestern Bell, 106 L. Ed. 2nd 195 (1989).

On April 18, 1991, plaintiffs petitioned the United States Court of Appeals Eighth Circuit for rehearing en banc, which was denied on May 10, 1991.

On May 20, 1991, petitioners filed a motion for a stay of mandate pending certiorari which was denied on May 29, 1991.

CONCLUSION

The Petition for a writ of certiorari should be granted and after review the United States Court of Appeals, Eighth Circuit's dismissal reversed. Unless supervised by this court, the United States Court of Appeals, Eighth Circuits' advanced judicial fixing of the methods available to prove Congressional RICO

legislation violates, will continue to violate the separation of Powers doctrine of the United States Constitution, Article 1., Section 1. and Article III [3], there of. This court's ruling in H.J. Inc. vs. Northwestern Bell, 106 L ED 2nd 195 (1989), should be upheld to assure uniform policing of the Federal RICO legislation among the several circuits and districts.

[3] See at Appendix pages APP. 15,16,17, Article I, Section 1, & Article III, of the United States Constitution verbatim copy.

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MAX L. BARD d/b/a
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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1991

EUGENE C. BARD, et al., Petitioner
vs.
DONALD L. CROCKETT, et. al., Respondent[2]

U.S. District Court Case Number 89-5025 CV-SW-8
Kansas City, Missouri, Eighth Circuit,
U.S. Court of Appeals, Case Number 90-2163 WM
St. Louis, Missouri, Eighth Circuit.

CERTIFICATE OF SERVICE

EUGENE C. BARD, JAMES F. BARD AND MAX L. BARD, PETITIONERS IN THE ABOVE CAPTIONED CASE HEREBY CERTIFY THAT ON THIS 4th DAY OF June, 1991, A TRUE AND CORRECT COPY OF THE ABOVE AND FOREGOING:

PETITION FOR WRIT OF CERTIORARI

TO RESPONDENTS OR THEIR ATTORNEYS WAS MAILED WITH PROPER POSTAGE THERE ON TO THE FOLLOWING LIST:

1. ROBERT L. BRADLEY OF BLANCHARD, VAN FLEET, MARTIN, ROBERTSON, DERMOTT, 320 W. 4TH STREET, P.O. BOX 1626, JOPLIN, MO 64802, ATTORNEY FOR DEFENDANTS: DONALD L. CROCKETT (2), BURL F. HAMILTON (3), CROCKETT OIL CO. (4), JOPLIN OIL COMPANY(5).

2. GLENN A. BURKHART OF MANN, WALTER, BURKHART, WEATHERS & WALTER, 300 JOHN Q. HAMMONS PARKWAY, SUITE 600, SPRINGFIELD, MO 65806. AND

3. JOHN A. VERIN III OF ARMSTRONG, TEASDALE, SCHLAFLY, DAVIS, DICUS, 1700 CITY CENTER SQUARE, 1100 MAIN STREET, KANSAS CITY, MO 64105, ATTORNEYS FOR DEFENDANTS: CONOCO, INC.(6), E.I. DUPONT DE NEMOURS AND COMPANY, INC. (7).

4. LEE ANN MILLER AND RICHARD C. MILLER OF WOOLSEY, FISHER, WHITEAKER AND MCDONALD, 300 S. JEFFERSON, SUITE 600, P.O. BOX 1245, SPRINGFIELD, MO 65801, ATTORNEYS FOR DEFENDANTS: TOTAL PETROLEUM, INC.(8.)

5. JOHN KILROY, JR. AND PHILLIP W. BLEDSOE, OF SHUGHART, THOMSON, KILROY, 120 W. 12TH ST., KANSAS CITY, MO 64105, ATTORNEYS FOR DEFENDANTS: MOBIL CORPORATION (9), MOBIL OIL CORPORATION (10), TRI ANGLE REFINERIES, INC. (29), KERR MCGEE CORPORATION (30).

6. GRANT W. SCOTT AND FREDRICH H. LAAS, OF SPENCER SCOTT AND DWYER, FIRST NATIONAL MERCANTILE BUILDING, FOURTH & MAIN ST., JOPLIN, MO., 64801, ATTORNEYS FOR DEFENDANTS: FIRST NATIONAL MERCANTILE BANK AND TRUST CO. (12), MERCANTILE BANCORPORATION, INC. (13), SUN REFINING AND MARKETING CO. (11), FINA OIL AND CHEMICAL CO., (32).

7. WILLIAM R. MODRCIN,OF MORRIS AND LARSON, P.C., FOURTH FLOOR, TWO CROWN CENTER, 2420 PERSHING RD., KANSAS CITY, MO 64108-2574, ATTORNEY FOR DEFENDANTS: LAWRENCE V. "LARRY" HICKEY, JR. (14), AND VIRGINIA HICKEY (15).

8. JAMES F. DUNCAN OF WATSON, ESS, MARSHALL, ENGGAS,
1010 GRAND AVE., KANSAS CITY, MO 64106-2271, ATTORNEY FOR
DEFENDANTS: UNITED MISSOURI BANK OF JOPLIN, MO. (16), UNITED MISSOURI BANCSHARES, INC. (17).

9. DANIEL E. SCOTT OF COPELAND, SCOTT AND WHELAN, 614 PEARL ST., P.O. BOX 2845, JOPLIN, MO 64803, ATTORNEY FOR DEFENDANTS: LARRY H. MARTIN (18), L. & E. MARTIN OIL COMPANY (19).

10. LOYD E. OWEN, BENARD J. RHODES, MARIETTA PARKER OF GAGE AND TUCKER, 2345 GRAND AVE., P.O. BOX 418200, KANSAS CITY, MO 64141, ATTORNEYS FOR DEFENDANTS: TEXACO, INC. (20), DERBY REFINING COMPANY, a/k/a COASTAL DERBY REFINING COMPANY (33) COASTAL REFINING AND MARKETING COMPANY (34), THE COASTAL CORPORATION (38).

11. JERRY E. WELLS, 333 W. 5TH ST., P.O. BOX 1566, JOPLIN, MO 64802 ATTORNEY FOR DEFENDANT: DAVID LEE GARRISON (21).

12. F. RICHARD VAN PELT, OF VAN PELT AND VAN PELT, 1200 E. WOODHURST DRIVE, #U100, SPRINGFIELD, MO 65804, ATTORNEY FOR DEFENDANTS: ROBERT W. HENSON (22), MAYNARD L. HENSON (23), HENSON OIL CO. (24).

13. STEPHEN G. PENUEL AND NEAL F. LEHMAN, 1232 ADAMS BUILDING, BARTLESVILLE, OK. 74004, AND

GLENN A. BURKHART OF MANN, WALTER, BURKHART,
WEATHERS, WALTER, 300 JOHN Q. HAMMONS PARKWAY, SUITE 600,
SPRINGFIELD, MO 65806, ATTORNEYS FOR DEFENDANT: PHILLIPS
PETROLEUM COMPANY (25).

14. PAUL E. VARDEMAN AND CATHY J. DEAN OF POLSINELLI, WHITE, VARDEMAN, SHALTON, 4705 CENTRAL ST., KANSAS CITY, MO 64112, ATTORNEYS FOR DEFENDANT: EXXON CORPORATION (31).

15. LAURENCE H. FLANIGAN OF FLANIGAN, MCCANSE AND LASELY, 400 GRANT ST., CARTHAGE, MO, 64836, ATTORNEY FOR DEFENDANTS: RAY W. GRACE

(35), JERRY W. PERRY (36), GRACE ENERGY CORPORATION (37).

16. WILLIAM J. FLEISCHAKER, OF ROBERTS, FLEISCHAKER AND WILLIAMS, 418 WALL ST., P.O. BOX 996, JOPLIN, MO 64802, ATTORNEYS FOR DEFENDANTS: MID-WESTERN OIL & SUPPLY CO. (28), IDA J. BENNETT (27), ROBERT M. JEFFRIES (26).

17. JOHN L. SHOEMAKER , CONOCO, INC.- LEGAL DEPT., 600 N. DAIRY ASHFORD, MCLEAN BLDG., SUITE 2022, P.O. BOX 2197, HOUSTON, TX 77252-2197, ATTORNEY FOR DEFENDANT: CONOCO, INC. (6).

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APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 90-2163

Eugene Bard, James F. Bard, Max L. Bard, d/b/a Bard and Bard Co.,	*	
	*	Order Denying
	*	Petition for
Appellants,	*	Rehearing with
	*	Suggestion for
v.	*	Rehearing
	*	En Banc
Donald L. Crockett, Individually, Crockett Oil Company, Burl F. Hamilton, Individually Joplin Oil Company, Conoco, Inc., E.I. DuPont de Nemours & Company, Total Petroleum Inc. Mobil Corp., & Mobil Oil Corporation, Sun Refining & Marketing Company, First National Mercantile Bank & Trust Company of Joplin, MO Mercantile Bancorporation, Inc., Lawrence V. "Larry" Hickey, Jr., Virginia Hickey, United Missouri Bank of Joplin MO, United Missouri Bancshares Inc., Larry H. Martin, Individually, L & E Martin Oil Company, Texaco, Inc., David Lee Garrison, Robert W. Henson, Maynard L. Henson, Henson Oil Co., Phillips Petroleum Company Robert M. "Bob" Jeffries, Ida J. Bennett, Individually, Midwestern Oil & Supply	*	

Company, Tri Angle Refineries, Inc., Kerr McGee Corporation Exxon Corporation, Fina Oil & Chemical Company, Derby Refining Company, Coastal Refining & Marketing, Inc., Ray W. Grace, Individually, Grace Energy Corporation, and John Doe or Richard Roe,

Appellees.

Appellant's suggestion for rehearing en banc has been considered by the court and is denied by reason of the lack of a majority of the active judges voting to rehear the case en banc.

Petition for rehearing by the panel is also denied.

May 10, 1991

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

IN THE UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

No. 90-2163-WM

EUGENE C. BARD, et al., Appellants

vs.

DONALD L. CROCKETT, et al., Appellees.

Submitted: March 19, 1991

Filed: April 5, 1991

Before JOHN R. GIBSON, BOWMAN, AND LOKEN, Circuit Judges.

PER CURIAM.

Eugene Bard, James F. Bard, and Max L. Bard, doing business as Bard and Bard Company, appeal from the District Court's[1] dismissal

---

[1]The Honorable Joseph E. Stevens, Jr., United States District Court for the Western District of Missouri.

without prejudice of their civil RICO action, filed pursuant to 18 U.S.C. Section 1964 (c), for failure to state a claim. The District Court concluded that the Bards' second amended complaint failed to allege facts demonstrating that the numerous defendants named in the case were engaged in an enterprise, as that term is defined in United States v. Bledsoe, 674 F.2d 647, 664-65 (8th Cir.), cert. denied, 459 U.S. 1040 (1982), and United States v. Flynn, 852 F.2d 1045, 1051 (8th Cir.), cert. denied, 488 U.S. 974 (1988). Upon review of the record, we agree and thus affirm the judgment of the District Court. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

EUGENE C. BARD, et al.	)	Filed June 14, 1990
	)	
Plaintiffs,	)	
vs.	)	
	)	No. 89-5025-CW-SW-8
Donald L. Crockett, et al.	)	
	)	
Defendants.	)	

ORDER

Plaintiffs filed this lawsuit against thirty-six named defendants and various John Doe individuals, partnerships, and corporations, alleging that they engaged in a pattern of racketeering activity in violation of the Racketeering Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. Section 1964 (c). On August 23, 1989, the court granted the motion of several defendants for a more definite statement, ordered plaintiffs to file the same within 25 days of the date of the order, denied defendants' motion seeking an order requiring plaintiffs employ counsel in this matter, and ordered a stay of discovery until plaintiffs

filed their more definite statement. In response to the court's order, plaintiffs filed a 95 page second amended complaint on September 19, 1989. Presently before the court are the defendants' motions to dismiss or, in the alternative, for more definite statement. For the reasons noted below, defendants' motions to dismiss are granted. (original) Doc. #201.

Under a Rule 12(b) (6) motion to dismiss for failure to state a claim upon which relief can be granted, the complaint is to be construed in a light most favorable to plaintiff and its allegations are to be taken as true. Scheuer v. Rhodes, 416 U.S. 232 (1974). The critical issue then is the sufficiency of the complaint, which is governed by the pleading standard stated in Fed. R. Civ. P. 8(a). Rule 8(a) requires that the complaint contain a short and plain statement of the claim showing that the claimant is entitled to relief. The resolution of whether a claim is stated encompasses the

determination of whether relief can be granted on the claim. Davis v. Passman, 442 U.S. 228 (1979). The Supreme Court has stated that

> in appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

Conley v. Gibson, 355 U.S. 41, 45 (1957). In the instant case, the court finds that plaintiffs could not prove any set of facts which would support a RICO claim against any of the defendants entitling plaintiffs to relief. In fact, plaintiffs have failed to allege necessary facts that would support a violation of RICO.

A violation of RICO, 18 U.S.C. Section 1962 (c), requires "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." Sedima, S.P.R.L. v. Imrex Co., Inc. 473 U.S. 479, 496 (1985). An enterprise must

exhibit three basic characteristics: "(1) a common or shared purpose; (2) some continuity of structure and personnel; (3) an ascertainable structure distinct from that inherent in a pattern of racketeering." United States v. Flynn, 852 F. 2d 1045, 1051 (8th Cir. 1988), cert. denied, 109 S. Ct. 511 (1988). The distinct structure of a RICO enterprise may be demonstrated by evidence that it has "an organizational pattern or system of authority beyond what was necessary to perpetuate the predicate crimes. The command system of a Mafia family is an example of this type of structure." United States v. Bledsoe, 674 F. 2d 647, 665, cert. denied, 459 U.S. 1040 (8th Cir. 1982).

In the present case, plaintiffs contend that

> [o]n or about January 1, 1970 until October 16, 1970, some or all of the Defendants, their Agents and Servants entered into a massive conspiracy, wherein they colluted [sic] to commit illegal acts toward plaintiffs...in order to soften up, said plaintiffs'

> competitive efforts by the target date of a nationwide price raise, planned by said Defendants on November 17, 1970.

Plaintiffs' Second Amended Complaint, hereinafter Complaint, at 28. Plaintiffs then allege a series of meetings which they contend demonstrate these efforts. For example, plaintiffs state that on November 17, 1970 "[s]ome Defendants, their Agents and Servants here in after [sic] named, physically assembled at Keller's Barbeque Restaurant at 1514 West 7th Street, Joplin, Jasper County, Missouri. . . to assist locally in the regional coordination of Mobil Oil Corporation's announced effort and intent to raise the price of gasoline motor fuel nationwide . . . ." Complaint at 20. Plaintiffs allege that after the meeting at Keller's Barbeque, Delmar Holden "bedecked with the blessings of the participants of the Keller's Barbeque meeting left the meeting and gathered several members of his Four State Gasoline

Dealer's Association" to picket plaintiffs' gas station.

Complaint at 25.

Plaintiff's second amended complaint goes on to allege meetings on December 7, 1970 and January 4, 1971 about the "price war situation," Complaint at 26, a series of telephone calls, intended to "harass, terrorize and threaten each of said plaintiffs. . .," as well as destruction of plaintiffs' property from 1970 to 1977, Complaint at 30-55; and an attempt by Dr. Donald Crockett to buy plaintiffs' business, Complaint at 55; more telephone calls in 1977 and further attempts by some or all defendants to get plaintiffs' gas prices up, Complaint at 56-60; more telephone calls in 1978-79 and various allegations concerning about the banking practices in Joplin, Missouri, Complaint at 64-68; various allegations about the Joplin Globe Newspaper and television Channel 16 being involved in the oil business, Complaint at

68-70; vague allegations about Coastal Corporation owing plaintiffs money and then Coastal Corporation filing suit against plaintiffs, Complaint at 70-74; vague allegations about some or all defendants breaking into plaintiffs' place of business, Complaint at 70; a nearly incoherent allegation about a sawed off shotgun leaning against a tree near plaintiff Max Bard's home which made him fear for his life, Complaint at 75-77; and allegations about Joplin bankers conspiring with some defendants to destroy plaintiffs' credit from 1981 to 1987, Complaint at 80-84.

The above series of alleged events do not state facts indicating an enterprise for purposes of RICO. Nowhere in the second amended complaint is there any allegation of an organizational pattern or system of authority which demonstrates an enterprise. Thus, the court finds that plaintiffs could prove no set of facts in support of their RICO claim which

would entitle them to relief. Accordingly, pursuant to Rule 12 (b) (6), it is

ORDERED that defendant's motions to dismiss are granted. It is further

ORDERED that plaintiff's complaint is dismissed without prejudice.

JOSEPH E. STEVENS, JR.

UNITED STATES DISTRICT JUDGE

June 14, 1990

a true copy

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 90-2163

Eugene Bard, James F. Bard, Max L. Bard, d/b/a Bard and Bard Co.,	*	
Appellants,	*	Appeal from the United States Court for the Western District of Missouri.
v.	*	
Donald L. Crockett, Individually, Crockett Oil Company, Burl F. Hamilton, Individually Joplin Oil Company, Conoco, Inc., E.I. DuPont de Nemours & Company, Total Petroleum Inc. Mobil Corp., & Mobil Oil Corporation, Sun Refining & Marketing Company, First National Mercantile Bank & Trust Company of Joplin, MO Mercantile Bancorporation, Inc., Lawrence V. "Larry" Hickey, Jr., Virginia Hickey, United Missouri Bank of Joplin MO, United Missouri Bancshares Inc., Larry H. Martin, Individually, L & E Martin Oil Company, Texaco, Inc., David Lee Garrison, Robert W. Henson, Maynard L. Henson, Henson Oil Co., Phillips Petroleum Company Robert M. "Bob" Jeffries, Ida J. Bennett, Individually, Midwestern Oil & Supply	*	

Company, Tri Angle Refineries, Inc., Kerr McGee Corporation Exxon Corporation, Fina Oil & Chemical Company, Derby Refining Company, Coastal Refining & Marketing, Inc., Ray W. Grace, Individually, Grace Energy Corporation, and John Doe or Richard Roe,

Appellees.

Appellants' motion for stay of mandate pending certiorari proceedings has been considered by the court and is denied.

May 29, 1991

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

The Constitution of the United States

Article I.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article III.

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and

Treaties made, or which shall be made, under their Authority;-to all Cases affecting Ambassadors, other public Ministers and Consuls;-to all Cases of admiralty and maritime Jurisdiction;-to Controversies to which the United States shall be a Party;-to Controversies between two or more States;-between a State and Citizens of another State;-between Citizens of different States;-between Citizens of the same State claiming Lands under Grants of different States; and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

IN THE SURPREME COURT OF THE UNITED STATES

October Term 1991

U.S. District Court Case Number 89-5025 CV-SW-8
Kansas City, Missouri, Eighth Circuit,
U.S. Court of Appeals, Case Number 90-2163 WM
St. Louis, Missouri, Eighth Circuit.

---

1. EUGENE C. BARD,
JAMES F. BARD,
MAX L. BARD d/b/a
BARD & BARD COMPANY

Petitioners

vs.

2. DONALD L. CROCKETT individually,
3. BURL F. HAMILTON individually,
4. CROCKETT OIL COMPANY,
5. JOPLIN OIL COMPANY,
6. CONOCO, INC., and parent company
7. E.I. DUPONT de NEMOURS AND COMPANY,
8. TOTAL PETROLEUM, INC.,
9. MOBIL CORP., and parent company
10. MOBIL OIL CORP.,
11. SUN REFINING AND MARKETING COMPANY,
12. FIRST NATIONAL MERCANTILE BANK AND TRUST COMPANY, and parent company
13. MERCANTILE BANCORPORATION INC.,
14. LAWRENCE V. "LARRY" HICKEY JR., and individually,
15. VIRGINIA HICKEY, and individually,
16. UNITED MISSOURI BANK OF JOPLIN MISSOURI, and parent company
17. UNITED MISSOURI BANCSHARES, INC.
18. LARRY H. MARTIN, individually,
19. L & E MARTIN OIL COMPANY,
20. TEXACO, INC.,
21. DAVID LEE GARRISON individually,
22. ROBERT W. HENSON individually,
23. MAYNARD L. HENSON individually,

24. HENSON OIL COMPANY,
25. PHILLIPS PETROLEUM COMPANY,
26. ROBERT M. "BOB" JEFFERIES individually,
27. IDA J. BENNETT individually,
28. MIDWESTERN OIL & SUPPLY COMPANY,
29. TRI ANGLE REFINERIES, INC., and parent company
30. KERR MCGEE CORPORATION, and major supplier
31. EXXON CORPORATION,
32. FINA OIL & CHEMICAL COMPANY,
33. DERBY REFINING COMPANY,a/k/a COASTAL DERBY REFINING COMPANY and
34. COASTAL REFINING & MARKETING, INC., See #38 for parent company
35. RAY W. GRACE individually,
36. JERRY J. PERRY individually,
37. GRACE ENERGY CORPORATION,
38. THE COASTAL CORPORATION, the added 36th Defendant
39. JOHN DOE OR RICHARD ROE individuals partnerships, corporations, wherever, or any legally approachable organization, and whenever identified, as involved in this case and during this case, in any State or territory of the United States of America.

Respondents

APPLICATION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES SUPREME COURT

EUGENE C. BARD
JAMES F. BARD
MAX L. BARD d/b/a
BARD AND BARD COMPANY

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(2)

No. 90-1875

FILED
JUL 3 1991
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1991

EUGENE C. BARD, et al.,

Petitioners,

vs.

DONALD L. CROCKETT, et al.,

Respondents.

Petition For Writ Of Certiorari To The United States Court of Appeals For The Eighth Circuit

JOINT RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals for the Eighth Circuit correctly affirmed the District Court's dismissal of plaintiffs' Amended Petition for failure to state a claim upon which relief can be granted.

PARTIES TO PROCEEDINGS BELOW

Petitioners, Eugene C. Bard, James F. Bard and Max L. Bard were plaintiffs-appellants below. Defendants-appellees below were Donald L. Crockett, Crockett Oil Company, Burl F. Hamilton, Joplin Oil Company, Conoco, Inc., E. I. DuPont de Nemours & Company, Total Petroleum Inc., Mobil Corporation, & Mobil Oil Corporation, Sun Refining & Marketing Company, First National Mercantile Bank & Trust Company of Joplin, Mo., Mercantile Bankcorporation, Inc., Lawrence Hickey, Jr., Virginia Hickey, United Missouri Bank of Joplin, Mo., United Missouri Bancshares, Inc., Larry H. Martin, L & E Martin Oil Company, Texaco, Inc., David Lee Garrison, Robert W. Henson, Maynard L. Henson, Henson Oil Co., Phillips Petroleum Company, Robert M. Jeffries, Ida J. Bennett, Midwestern Oil & Supply Company, Tri Angle Refineries, Inc., Kerr-McGee Corporation, Exxon Corporation, Fina Oil & Chemical Company, Derby Refining Company, Coastal Refining & Marketing, Inc., Ray W. Grace, Jerry J. Perry, Grace Energy Corporation, and John Doe or Richard Doe.

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No. 90-1875

In The

Supreme Court of the United States

October Term, 1991

EUGENE C. BARD, et al.,

Petitioners,

vs.

DONALD L. CROCKETT, et al.,

Respondents.

Petition For Writ Of Certiorari To The United States Court of Appeals For The Eighth Circuit

JOINT RESPONDENTS' BRIEF IN OPPOSITION

Respondents Mobil Corporation, et al., respectfully pray that the Court deny the Petition for Writ of Certiorari seeking review of the Eighth Circuit's Order entered May 10, 1991.

STATEMENT OF THE CASE

On March 17, 1989, petitioners filed a *pro se* RICO complaint in the United States District Court for the Western District of Missouri against thirty-six defendants. Upon the motion of several defendants, the District Court ordered plaintiffs to file a more detailed complaint. After plaintiffs' filed their Second Amended

Complaint the district court granted defendants' motions to dismiss under Fed. R. Civ. P. 12(b)(6) on the grounds that plaintiffs failed to plead "facts indicating an enterprise for purposes of RICO." App. 11. In a *per curiam* opinion the Eighth Circuit affirmed.

REASONS FOR DENYING THE WRIT

I. Petitioners' failure to plead an "enterprise" does not raise an issue worthy of the Court's attention.

The Court should deny the petition for two fundamental reasons. First, petitioners' failure to clearly explain their position alone is grounds for denying the writ. Supreme Court Rule 14.5. Second, petitioners' request for review of a dismissal without prejudice presents no question worthy of the Court's attention.[1]

Petitioners' assertion that the Eighth Circuit's decision conflicts with cases from this Court or from other circuits is without merit. Contrary to petitioners' allegations, the decision below does not conflict with *H. J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989), or *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985). It also is not in conflict with *United States v. Master*, 924 F.2d 1362 (7th Cir.), *cert. denied*, 111 S.Ct. 2019 (1991), *Roeder v. Alpha Industries, Inc.*, 814 F.2d 22 (1st Cir. 1987), *Barticheck v. Fidelity Union Bank*, 832 F.2d 36 (3d Cir. 1987), or *Sun*

[1] Although petitioners present several questions in their petition, all the questions focus on the propriety of the district court order dismissing the complaint for failure to state a claim upon which relief can be granted.

Savings & Loan Ass'n v. Dierdorff, 825 F.2d 187 (9th Cir. 1987).[2]

The district court dismissed petitioners' complaint because they had not pleaded an "enterprise" as defined by *United States v. Bledsoe*, 674 F.2d 647 (8th Cir.), *cert. denied*, 459 U.S. 1040 (1982), and *United States v. Flynn*, 852 F.2d 1045 (8th Cir.), *cert. denied*, 488 U.S. 974 (1988).

This Court's cases cited by petitioners do not deal with the "enterprise" element of a RICO claim. For example, in *Sedima* that Court held that a criminal RICO conviction is not a prerequisite to civil RICO liability. The Court also defined the type of injury that must be pleaded in order to state a civil RICO claim.

The other cases cited by petitioners are equally inapplicable. For example, *Northwestern Bell*, *Barticheck* and *Sun Savings* do not address the element of "enterprise" and focus instead on the separate elements of "conduct" and "pattern." *Northwestern Bell* and *Barticheck* deal only with what establishes a "pattern"; *Sun Savings* focuses on "conduct". Nor do *Roeder* and *Masters* conflict with the decision of the Eighth Circuit. *Roeder* holds that under RICO, a corporation may be either a "person" or an "enterprise," but not both. *Masters* holds only that a law firm, two police departments and three individuals can

---

[2] *United States v. R. J. Reynolds Tobacco Co.*, 416 F.Supp. 316 (D. N. J. 1976), also cited by plaintiffs, is not a RICO case. Its only arguable application here is its statement that the Court "can speak with authority to assure uniformity of federal law among the several circuits and districts." *Id.* at 320. Respondents do not question the Court's supervisory powers.

constitute an "enterprise." Petitioners' contention of conflict among the circuits is incorrect.

Simply stated, the cases cited by petitioners have no application here. The Court should not grant certiorari to deal with abstract conflicts in the circuits on the law of RICO. *See The Monrosa v. Carbon Black Export*, 359 U.S. 180, 184 (1959).

CONCLUSION

For the foregoing reasons, petitioners' alleged conflict among Circuits does not exist. Petitioners present no question worthy of this Court's attention, and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Supreme Court, U.S.
FILED
JUL 15 1991
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(3)

NO. 90-1875

IN THE SUPREME COURT

OF THE UNITED STATES

October Term 1991

EUGENE C. BARD, et al., Petitioner

vs.

DONALD L. CROCKETT, et.al.,Respondent[1]

PLAINTIFFS' OPPOSITION AND BRIEF IN OPPOSITION TO JOINT RESPONDENTS'[2] MOTION FOR RELIEF FROM COMPLIANCE WITH SUPREME COURT RULE 29.1

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James F. Bard, pro se, James F Bard

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NO. 90-1875

IN THE SUPREME COURT

OF THE UNITED STATES

October Term 1991

EUGENE C. BARD, et al., Petitioner

vs.

DONALD L. CROCKETT, et. al., Respondent[1]

PLAINTIFFS' OPPOSITION AND BRIEF IN OPPOSITION TO JOINT RESPONDENTS' MOTION FOR RELIEF FROM COMPLIANCE WITH SUPREME COURT RULE 29.1

Plaintiffs move the Court for an order requiring respondents to comply with the requirements of Supreme Court Rule 29.1.

Supreme Court Rule 29.1 requires every document, except a joint appendix or brief amicus curiae, filed by or on behalf of one or more corporations, shall include a list naming all parent companies and non-wholly owned subsidiaries of each corporation.

Petitioners petition does present a question worthy of the court's attention, so that clarity and predictability in RICO civil applications can be assured among the several circuits.

Compliance with Supreme Court Rule 29.1, by these joint respondents is not an undue burden since their subsidiaries and parent companies are maintained on their computerized accounting records, and are reportable within minutes by the push of the key.

More importantly, on the all important question concerning the sufficiency of petitioners allegations of "enterprise", in their cause of action against Respondents, now before the Court, associations and relationships of various persons and entities, could tend to disclose the substance of what the "enterprise" includes and consist of, among these respondents.

For the above reasons Respondents respectfully request the Courts' ordering respondents to comply with Rule 29.1, by overruling Joint Respondents' motion for relief from compliance with Rule 29.1.

Respectfully submitted,

EUGENE C. BARD

JAMES F. BARD

MAX L. BARD d/b/a

BARD AND BARD COMPANY

by: Eugene C. Bard

EUGENE C. BARD, Pro Se

by: James F. Bard

JAMES F. BARD, Pro Se

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APPENDIX

Footnote 1

A full respondent list was presented on the original Petition for Writ of Certiorari.

Footnote 2

List of Joint Respondents

1. Mobil Corporation and parent Company
2. Mobil Oil Corporation;
3. Tri Angle Refineries, Inc. and parent Company
4. Kerr McGee Corporation;
5. Total Petroleum, Inc.;
6. First National Mercantile Bank and Trust Company and parent Company
7. Mercantile Bancorporation, Inc.;
8. Phillips Petroleum Company;
9. Exxon Corporation;
10. Coastal Derby Refining Company;
11. Coastal Refining and Marketing, Inc.;
12. Texaco, Inc.

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NO. 90-1875

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1991

EUGENE C. BARD, et al.,

Petitioners,

vs.

DONALD L. CROCKETT,et.al.,

Respondents.[1]

CERTIFICATE OF SERVICE

PETITIONERS' REPLY TO JOINT

RESPONDENTS'[2] BRIEF IN OPPOSITION

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NO. 90-1875

IN THE SUPREME COURT
OF THE UNITED STATES
October Term 1991

EUGENE C. BARD, et al.,
Petitioners

vs.

DONALD L. CROCKETT, et. al.,
Respondents[1]

CERTIFICATE OF SERVICE

Eugene C. Bard, James F. Bard and Max L. Bard, pro se petitioners in the above captioned case declare and certify under penalty of perjury under the laws of the United States that on this 17th day of July, 1991, a true and correct copy of the above and foregoing:

PETITIONERS' REPLY TO JOINT RESPONDENTS BRIEF IN OPPOSITION

to all respondents and their attorneys to be served was mailed by being deposited in the United States Mail,

with the proper prepaid first class postage thereon, at the Seneca, Missouri post office, to the following list:

1. ROBERT L. BRADLEY OF BLANCHARD, VAN FLEET, MARTIN, ROBERTSON, DERMOTT, 320 W. 4TH STREET, P.O. BOX 1626, JOPLIN, MO 64802, ATTORNEY FOR DEFENDANTS: DONALD L. CROCKETT (2), BURL F. HAMILTON (3), CROCKETT OIL CO. (4), JOPLIN OIL COMPANY(5). 1-417-623-1515

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NO. 90-1875

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1991

EUGENE C. BARD, et al.,

Petitioners,

vs.

DONALD L. CROCKETT, et. al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONERS' REPLY TO JOINT RESPONDENTS' BRIEF IN OPPOSITION

Petitioners, Bards, respectfully pray that the Court grant the Petition For Writ of Certiorari to review the Eighth Circuits' Order entered May 10, 1991.

STATEMENT OF THE CASE

On March 17, 1989, petitioners Bards filed their pro se RICO complaint in the United States District Court, for

the Western District of Missouri against thirty-six defendants. Upon the motion of several defendants, the District Court ordered plaintiffs to file a more detailed complaint. After plaintiffs' filed their Second Amended Complaint the district court granted defendants' motions to dismiss under Fed. R. Civ. P. 12(b)(6) on the grounds that plaintiffs failed to plead "facts indicating an enterprise for purposes of RICO". App. 11. In a per curiam opinion the Eighth affirmed.

REASONS FOR GRANTING THE WRIT

I. Petitioners' Second Amended Complaint should not have been dismissed where it was not clear beyond doubt that Petitioners could prove no set of facts regarding an "enterprise" in civil RICO action.

The court should grant the writ for the following two reasons. First, petitioners request review of a dismissal of their civil RICO complaint in absence of a clear and certain nature

of the insufficiency of allegations of an enterprise. Second, the need to establish uniformity to assure predictabilty and clarity, regarding the Eighth Circuits' conflicting position with other circuits, as to the sufficiency of pleading an enterprise, in a civil RICO cause of action.

The Eighth Circuits' decision dismissing petitioners' complaint, is in conflict with cases from other circuits, regarding the clear and certain nature of the insufficiency of allegation of enterprise in a civil RICO action. The Eighth Circuit's inflexible approach of fixing in advance the methods of proving a civil RICO action, is in derogation to the language of the act, where at the pleading stage it is unclear whether petitioners could prove no set of facts consistent with their allegations.

The Supreme Court has not decided the sufficiency of a pleading of an "enterprise", in a civil RICO action, although in H.J.Inc., v. Northwestern Bell Telephone Co. et.al, 106 L Ed 2nd 195 (1989), this Court ruled on the sufficiency of pleading a civil RICO

action involving the "pattern" and "conduct" elements of the Act, pertaining to a 12(b)(6) dismissal. The RICO act defines what relationships/associations are included, in an "enterprise", rather that what an "enterprise" means. SURELY, Congress purposely left open other relationships/associations that could include an "enterprise". Conversely, the Eighth Circuit, unless the Court grants a writ to review, pre-fixes limitations on civil RICO, that are found no where in the act.[1]

Other Circuits follow the basic liberal notice pleading rules set forth in Rule 8 FRCP, not requiring such stringent detailed pleadings regarding

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[1] "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity. 18 U.S.C.A. 1961 (4).

an "enterprise." Federal Insurance Co. vs. Ayers 741 F. Supp. 1179 E.D. Pa 1990. 2

See Lewis vs. Sporck, 612 F. Supp. 1316 (D.C. Cole 1985). See U.S. vs. Masters 924 F2d 1362 (7th circuit 1991). 3

The Ninth Circuit in U.S. vs. Zemeck, 634 F2d 1159, 1167 (9th circuit 1980), stressed the broad scope of the enterprise definition, and the unnecessary stringency of pleading details of an enterprise. The Fifth

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2 See Leville Industries Machinery Corp. vs. Southmost Machinery Corp. 742 F. 2d 786, 790 (3rd cir. 1984) Holding that the three elements necessary to prove the existence of a RICO "enterprise" are not necessary to plead the existence of a RICO enterprise..... A plaintiff need only identify the enterprise so as to put the defendants on notice of the claims against them.....

3....Surely if three individuals can constitute a RICO enterprise, as no one doubts, then the larger association that consists of them plus entities that they control can be RICO enterprises too.....U.S. vs. Masters, supra, at page 1366.

Circuit's position, even as to proving enterprise, holds (jury entitled to infer existence of an enterprise from largely or wholly circumstantial evidence). U.S. vs. Elliott, 571 F2d 880, 897-900 (5th Circuit).

Petitioners request for review is worthy of the court's attention. The District Court should not have dismissed petitioners' complaint, where defendants were put on notice of "enterprise" allegations at the pleading stage and it is unclear whether petitioners could prove any set of facts consistent with their allegations.

The Eighth circuit cases of Bledsoe & Flynn, are inapplicable to this case,[4] as they decided

[4] Petitioners Second Amended Complaint alleges that defendants were a group of individuals associated in fact, as well as a separate source of their command enterprise, and the structural perimeters thereof. See Page 12 of Petitioners Application to their Application for Writ.

sufficiency of proof of criminal RICO offenses, rather than sufficiency of pleading a civil RICO action.

Simply stated, the Eighth Circuit's dismissal of petitioners complaint, for insufficiency of enterprise allegations, was not clear, certain and beyond a doubt, that they could prove no set of facts in support of their civil RICO claim, at the pleading stage of litigation.[5]

The Eighth Circuits' dismissal of petitioners Second Amended Complaint is in conflict, with this court's opinion in H.J. Inc. vs. Northwestern Bell Telephone Co., et.al. 106 L Ed 2d 195, regarding sufficiency of pleading a

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[5] In review of a dismissal pursuant to FRCP 12 (b) (6), we accept as true all well pleaded factual allegations and make all reasonable inferences in favor of plaintiff. Cruz v. Beto, 405 U.S. 319.

"...of [A] complaint may be affirmed only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.
H.J. vs. Northwestern Bell Telephone Company et. al. 492 U.S., 106 L Ed 195, 109 S Ct...".

RICO's civil cause of action, dismissing the complaint under Rule 12 (b) (6) F.R.C.P. H.J. Inc., supra, focused on the "pattern" and "conduct" elements of the Act, regarding the clarity of the insufficiency of allegations, under a Rule 12 (b) (6) dismissal. H.J.'s reasoning condemned the Eighth Circuits' inflexible approach of advance judicial fixing methods available to prove RICO civil actions. 6

It is reasonable to infer that at the pleading stage of petitioners complaint, that it was not clear and certain petitioners complaint regarding enterprise, was insufficient to state a civil RICO action, and that petitioners request for review is worthy of the courts' attention, and is a viable existing controversy unlike the moot question in the inapplicable case of

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6 H.J. Inc. vs. Northwestern Bell Telephone Co., et. al 106 L Ed 2nd 195 (1989) requires a flexible approach judicially. At page 202 there of... nor is there any language suggesting that RICO's scope should be to acts of an association rather than an individual acting alone.

The Monrosa vs. Carbon Black Exports. 359 U.S. (1959). [7] Even the same evidence in proving a Rico violation may be used to establish both the element of an enterprise and the element of a pattern of racketeering. U.S. vs. Turkett, 452 U.S. 576, 583, 101 S. Ct. 2524, 69 L Ed 2d 246 (1981). U.S. vs. Bognaiol 665 F2d 877 (1981).

[7] The Monrosa vs. Carbon Black Export 359 U.S. (1959) case was where after a writ was granted on oral argument, the granting of the writ was determined improvident where the question presented had become moot due to conduct and stipulations by the litigants.

The Court of Appeals for the Eighth Circuit erred in affirming the District Court's dismissal of plaintiffs' Amended Petition for failure to state a claim upon which relief can be granted.

CONCLUSION

For the foregoing reasons, this Court should grant petitioners' request for review to establish a uniform point of law, regarding the sufficiency of allegations of the "enterprise" element, in a civil RICO action, at the pleading stage, due to the Eighth Circuit's conflicting position thereto, with the other circuits.

Respectfully submitted,

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